

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 616 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MALINI KARKAL

Versus

COLLECTOR

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Appearance:

MR SHIRISH JOSHI for Petitioner

MR BY MANKAD, Ld.AGP for Respondents

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/03/99

ORAL JUDGEMENT

Rule. Mr.B.Y.Mankad, learned Asstt.Govt.Pleader waives the service of Rule on behalf of the respondents. In the facts and circumstances of this case, the matter is taken up for final hearing as prayed by both the sides.

2. The order impugned in this petition is the order dated 9th May 1997 Annexure.G passed by the Secretary, Information, Broadcasting and Tourism Department. It is the common case of the parties that against this very

order dated 9th May 1997, certain Special Civil Applications had also been filed in this Court. One of such matters is Special Civil Application No.3871 of 1997. A copy of the decision dated 7th July 1997 passed in Special Civil Application No.3871 has been placed on record as Annexure.H with the petition. As per this decision dated 7th July 1997, a direction was given to hear the petitioners again after giving them proper notice and indicating at least the broad outlines of the grounds on which the order of allotment was sought to revised and the impugned order dated 9th May 1997 was quashed and set aside and the Rule was made absolute for the aforesaid limited purpose only. The Court noticed the rival claims of both the sides with regard to the possession and it was also directed to maintain the status-quo with respect to the plot of land so as to mean that if it is in possession of the petitioners, then the petitioners will not proceed to carry any construction thereon and if it is in possession of the respondents, the respondents will not proceed to hold any auction or allot particular plot of land to somebody else, until the order of allotment is either confirmed or revised after hearing the petitioners in accordance with law. The notice of hearing was directed to be given by the State of Gujarat and it was also directed that it will be for the State of Gujarat to decide as to who will give the notice and hear. It was also left open for the petitioners to raise all points that they have raised over here before the concerned authority including that of lack of jurisdiction, if it is their case. Rule was made absolute accordingly.

3. The present petition was filed on 2nd February 1998 with the allegations that in the advertisement issued by the State of Gujarat, the petitioner's application for allotment of the plot of land initially for residential purpose was granted on 6th January 1972 in respect of plot No.23/C admeasuring 2000 sq.mtrs. at Saputara in District Dang; on 26th July 1972 an order was passed incorporating the fact that the said plot was allotted and was granted in pursuance of the order dated 31st January 1972 and that it was granted for a period of 30 years; the petitioner moved an application for allowing her to change the use of the said plot from that of residential purpose to commercial purpose and this application was rejected on 20th July 1993. Yet another application for the same purpose, i.e. for change of use from residential to commercial was moved by the petitioner on 19th February 1995 and the Collector, Dang, vide his order dated 1st March 1995, accepted the request of the petitioner with regard to the aforesaid change of

use which had been applied for. Thereafter, the State of Gujarat passed the impugned order dated 9th May 1997 whereby the Collector's order dated 1.3.1995 was set aside. On 3rd February 1998, the notice of this Special Civil Application was issued by this Court and in response to this notice, an affidavit-in-reply dated 8th September 1998 had been filed by the Collector, Dang and an affidavit-in-reply dated 9th September 1998 had also been filed under the signatures of the Deputy Secretary, Information, Broadcasting and Tourism Department. The petitioner herein thereafter filed an affidavit-in rejoinder dated 30th September 1998. The Collector, District Dang, in his affidavit-in-reply dated 8th September 1998 has come out with a case that in the master plan of the year 1972, the land in question was shown in residential zone. The planned development of Saputara hill station was under consideration and the Town Planning and Land Valuation Department of the State had prepared a map showing the various land use zones in 1992. In this map, the land in dispute was not shown for commercial use and the Gujarat Tourism Department had requested the Tata Consultancy to prepare the development plan and the said development plan prepared by Tata Consultancy was sent to the Chief Town Planner. In this application also, the land in question was shown in the residential zone. It has also been stated in the said affidavit-in-reply that, as per Rule 23 of the Rules, the plots for commercial purpose are required to be allotted by public auction and so also, the change of use could not be granted. It has been then stated that on 19th February 1995, one Savaisinh Purohit had again applied for change of the plot No.23/C of the petitioner and on this application, an order dated 1.3.1995 as claimed by the petitioner was passed by the Collector, District Dang. It has also been stated that the allotment Rules of 1970 were superseded by new Rules framed by way of Resolution dated 18th April 1972 and as per this Resolution also, the change of use is prohibited.

4. It has been given out by the learned Counsel Mr. Shirish Joshi for the petitioner that after the Court's order dated 7th July 1997 passed in Special Civil Application No.3871 of 1997, the hearing was afforded in various such cases on 8th August 1998 and he has submitted that incidentally, he was present before the Additional Chief Secretary, Tourism Department, who was hearing the grievances relating to such cases on 8th August 1998 at Saputara and he has also stated that on that day, an assurance was given for converting the plots in question to commercial use. This development appears to have taken place during the pendency of this petition

while it is maintained by Mr.Joshi on behalf of the petitioner that even after the Court's order dated 7th July 1997 referred to hereinabove, no action inspired notice as such was given to the petitioner and his presence on 8th August 1998 was only incidental and in fact, there was no question of any representation on behalf of the petitioner on that date, i.e. 8th August 1998 before the Additional Chief Secretary, Tourism Department. It appears that this matter had come up before the Court on 24th August 1998 and on that day, the learned Counsel for the petitioner may have stated that the assurance with regard to change of commercial purpose was given on 8th August 1998 at Saputara by the Additional Chief Secretary, Tourism Department and in this context, Shri K.A.Patel, Collector, Dang District, in his affidavit-in-reply dated 8th September 1998 has stated that he was also present on 8th August 1998 at Saputara when the Additional Chief Secretary, Tourism Department heard the matters and he has denied that no such assurance was given on that day. It has also been stated that the Government had decided not to grant permission for change of use as the plot is in the residential zone.

5. Be that as it may, in these proceedings before this Court, it is common case of the parties that even after this Court's order dated 7th July 1997, no action inspired notice as such was given to the petitioner as to why the order dated 1st March 1995 which had been passed by the Collector may not be set aside and it further appears from the proceedings dated 1.5.1998 before the Court that after the issuance of the impugned order dated 9th May 1997, and before the passing of the order dated 7th July 1997 by this Court, the Government had issued a letter dated 13th June 1997 to consider the question of permitting the petitioner to use the land in question for Paying Guests when the scheme is finalised. The scheme was not finalised and the Court passed an interim order that subject to the final decision of the petition, the petitioner will be free to use the premises in question for commercial purpose, namely, Paying Guests and for no other purpose. The Court observed that it was only an ad-hoc arrangement to confer no right on the petitioner and the petitioner shall stop using the premises for commercial purpose from 21st June 1998. It further appears from the proceedings dated 20th July 1998 that a copy of the Government Resolution containing the scheme for running the Guest Houses had been given to the learned Counsel for the petitioner by the learned Asstt. Govt. Pleader and the learned Counsel sought time as he was awaiting instructions from the petitioner. The

learned Asstt. Govt. Pleader has also placed on record the scheme for allowing the use of the land in question for Paying Guests in terms of the Resolution dated 1.12.1997. That by itself is not acceptable to the petitioner.

6. In the facts and circumstances of this case, when it has been held out as the common case of both the sides before this Court that no action inspired notice had been given to the petitioner for setting aside the order dated 1.3.1995 passed by the Collector before passing the impugned order dated 9th May 1997 and no notice has been given to the petitioner even thereafter, i.e. even after the Court's earlier order dated 7th July 1997, this Court does not find it necessary to consider the several questions which have been raised and so far as the present petition is concerned, the grievance appears to be covered by this Court's earlier decision dated 7th July 1991 rendered in Special Civil Application No.3871 of 1997 and in the facts of this case for reasons given in the order dated 7th July 1997 and the reasons given hereinabove, the impugned order dated 9th May 1997 is also quashed and set aside qua the petitioner and the respondent, Secretary to the Government in the Department of Industries and Tourism is directed to give a clear action inspired notice with grounds to the petitioner if at all the respondent intents to set aside the order dated 1st March 1995 passed by the Collector, District Dang and to pass the order afresh in accordance with law after affording a reasonable opportunity and hearing to the petitioner in this regard, whereat it will be open for the petitioner to raise all the objections which have been raised in this petition and which may be otherwise available to her. This Special Civil Application is, therefore, allowed in the terms as aforesaid and the Rule is also made absolute accordingly. No order as to costs.

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